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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**JOHN HASTINGS AND JILL
HASTINGS, INDIVIDUALLY
AND ON BEHALF OF ALL
OTHERS SIMILARLY
SITUATED,**

Plaintiffs,

v.

**WEST ASSET MANAGEMENT,
INC.**

Defendant.

Case No.: '14CV0300 GPC NLS

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

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1. JOHN HASTINGS AND JILL HASTINGS (“Plaintiffs”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of WEST ASSET MANAGEMENT, INC. (“Defendant”), in negligently and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to

1 themselves and their own acts and experiences, and, as to all other matters, upon
2 information and belief, including investigation conducted by their attorneys.

3 2. The TCPA was designed to prevent calls and text messages like the
4 ones described herein, and to protect the privacy of citizens like Plaintiffs.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how corporate similar entities may contact them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
13 support of this, Congress found that
14

15 [b]anning such automated or prerecorded telephone
16 calls to the home, except when the receiving party
17 consents to receiving the call or when such calls are
18 necessary in an emergency situation affecting the health
19 and safety of the consumer, is the only effective means
20 of protecting telephone consumers from this nuisance
21 and privacy invasion.

22 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
23 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
24 TCPA’s purpose).

25 4. Congress also specifically found that “the evidence presented to the
26 Congress indicates that automated or prerecorded calls are a nuisance and an
27 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
28 *Mims*, 132 S. Ct. at 744.

1 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
2 TCPA case regarding calls to a non-debtor similar to this one:

3
4 The Telephone Consumer Protection Act ... is well
5 known for its provisions limiting junk-fax
6 transmissions. A less-litigated part of the Act curtails
7 the use of automated dialers and prerecorded messages
8 to cell phones, whose subscribers often are billed by the
9 minute as soon as the call is answered—and routing a
10 call to voicemail counts as answering the call. An
11 automated call to a landline phone can be an
annoyance; an automated call to a cell phone adds
expense to annoyance.

12 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

13 **JURISDICTION AND VENUE**

14 6. This Court has federal question jurisdiction because this case arises
15 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
16 *LLC*, 132 S. Ct. 740 (2012).

17 7. Venue is proper in the United States District Court for the Southern
18 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
19 Defendant is subject to personal jurisdiction in the County of San Diego, State of
20 California as not only does Defendant regularly conduct business throughout the
21 State of California, but Plaintiffs reside within the County of San Diego, State of
22 California.

23 **PARTIES**

24 8. Plaintiffs are, and at all times mentioned herein was, citizens and
25 residents of the State of California. Plaintiffs are, and at all times mentioned
26 herein were each, a “person” as defined by 47 U.S.C. § 153 (10).
27
28

1 9. Plaintiffs iare informed and believe, and thereon allege, that
2 Defendant is, and at all times mentioned herein was, a corporation whose
3 corporate headquarters is in Nebraska. Defendant, is and at all times mentioned
4 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10).
5 Plaintiffs allege that at all times relevant herein Defendant conducted business in
6 the State of California and in the County of San Diego, and within this judicial
7 district.

8 **FACTUAL ALLEGATIONS**

9 10. At all times relevant, Plaintiffs were citizens of the State of
10 California. Plaintiffs are, and at all times mentioned herein were each, a “person”
11 as defined by 47 U.S.C. § 153 (10).

12 11. Defendant is, and at all times mentioned herein was, a corporation
13 and a “person,” as defined by 47 U.S.C. § 153 (10).

14 12. At all times relevant Defendant conducted business in the State of
15 California and in the County of San Diego, within this judicial district.

16 13. Beginning in or around June of 2013, Defendant began to utilize
17 Plaintiffs’ cellular telephone number, ending in 0490, to place virtually daily
18 incessant calls to Plaintiffs pertaining to an alleged debt owed stemming from
19 medical services rendered in 2012.

20 14. In during this time, Defendant placed calls on a daily basis, often
21 placing numerous calls a day.

22 15. In July of 2013, Plaintiffs delivered a written correspondence to
23 Defendant, which amongst other things, made a written demand that any and all
24 telephone calls regarding the alleged debt must cease.

25 16. Despite receiving this written demand on July 9, 2013, Defendant
26 continued to call Plaintiffs’ cellular telephone regarding the alleged debt owed.
27
28

1 17. The calls Defendant placed to Plaintiff's cellular telephone were
2 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
3 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

4 18. This ATDS has the capacity to store or produce telephone numbers
5 to be dialed, using a random or sequential number generator.

6 19. The telephone number that Defendant, or its agents, called was
7 assigned to a cellular telephone service for which Plaintiff incurs a charge for
8 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

9 20. These telephone calls constituted calls that were not for emergency
10 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

11 21. Plaintiffs have never provided any personal information, including
12 their cellular telephone number to Defendant for any purpose. Furthermore,
13 Defendant was advised in writing, to immediately cease placing calls to
14 Plaintiffs' cellular telephone. As such, neither Defendant nor its agents were
15 provided with prior express consent to place calls via its ATDS to Plaintiffs'
16 cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

17 22. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
18 § 227(b)(1).

19
20 **CLASS ACTION ALLEGATIONS**

21 23. Plaintiffs bring this action on behalf of themselves and on behalf of
22 and all others similarly situated ("the Class").

23 24. Plaintiffs represent, and are members of, the Class, consisting of All
24 persons within the United States who received any telephone call/s from
25 Defendant or its agent/s and/or employee/s to said person's cellular telephone
26 made through the use of any automatic telephone dialing system within the four
27 years prior to the filing of the Complaint.
28

1 25. Defendant and its employees or agents are excluded from the Class.
2 Plaintiffs do not know the number of members in the Class, but believe the Class
3 members number in the thousands, if not more. Thus, this matter should be
4 certified as a Class action to assist in the expeditious litigation of this matter.

5 26. Plaintiffs and members of the Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant, either directly or through its
7 agents, illegally contacted Plaintiffs and the Class members via their cellular
8 telephones, thereby causing Plaintiffs and the Class members to incur certain
9 cellular telephone charges or reduce cellular telephone time for which Plaintiffs
10 and the Class members previously paid, and invading the privacy of said
11 Plaintiffs and the Class members. Plaintiffs and the Class members were
12 damaged thereby.

13 27. This suit seeks only damages and injunctive relief for recovery of
14 economic injury on behalf of the Class, and it expressly is not intended to request
15 any recovery for personal injury and claims related thereto. Plaintiffs reserve the
16 right to expand the Class definition to seek recovery on behalf of additional
17 persons as warranted as facts are learned in further investigation and discovery.

18 28. The joinder of the Class members is impractical and the disposition
19 of their claims in the Class action will provide substantial benefits both to the
20 parties and to the court. The Class can be identified through Defendant's records
21 or Defendant's agents' records.

22 29. There is a well-defined community of interest in the questions of law
23 and fact involved affecting the parties to be represented. The questions of law
24 and fact to the Class predominate over questions which may affect individual
25 Class members, including the following:

- 26
27 a) Whether, within the four years prior to the filing of this Complaint,
28 Defendant or its agents placed any calls to the Class (other than a

1 call made for emergency purposes or made with the prior express
2 consent of the called party) to a Class member using any automatic
3 dialing system to any telephone number assigned to a cellular phone
4 service;

- 5 b) Whether Plaintiffs and the Class members were damaged thereby,
6 and the extent of damages for such violation; and
7 c) Whether Defendant and its agents should be enjoined from engaging
8 in such conduct in the future.
9

10 30. As persons that received numerous calls from Defendant via an
11 automated telephone dialing system, Plaintiffs are asserting claims that are typical
12 of the Class. Plaintiffs will fairly and adequately represent and protect the
13 interests of the Class in that Plaintiffs have no interests antagonistic to any
14 member of the Class.

15 31. Plaintiffs and the members of the Class have all suffered irreparable
16 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a
17 class action, the Class will continue to face the potential for irreparable harm. In
18 addition, these violations of law will be allowed to proceed without remedy and
19 Defendant will likely continue such illegal conduct. Because of the size of the
20 individual Class member's claims, few, if any, Class members could afford to
21 seek legal redress for the wrongs complained of herein.

22 32. Plaintiffs have retained counsel experienced in handling class action
23 claims and claims involving violations of the Telephone Consumer Protection
24 Act.

25 33. A class action is a superior method for the fair and efficient
26 adjudication of this controversy. Class-wide damages are essential to induce
27 Defendant to comply with federal and California law. The interest of Class
28 members in individually controlling the prosecution of separate claims against

1 Defendant is small because the maximum statutory damages in an individual
2 action for violation of privacy are minimal. Management of these claims is likely
3 to present significantly fewer difficulties than those presented in many class
4 claims.

5 34. Defendant has acted on grounds generally applicable to the Class,
6 thereby making appropriate final injunctive relief and corresponding declaratory
7 relief with respect to the Class as a whole.

8
9 **FIRST CAUSE OF ACTION**
10 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
11 **PROTECTION ACT**
12 **47 U.S.C. § 227 ET SEQ.**

13 35. Plaintiffs incorporate by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 36. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

18 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
19 seq, Plaintiffs and The Class are entitled to an award of \$500.00 in statutory
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

21 38. Plaintiffs and the Class are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**
24 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
25 **TELEPHONE CONSUMER PROTECTION ACT**
26 **47 U.S.C. § 227 ET SEQ.**

27 39. Plaintiffs incorporate by reference all of the above paragraphs of this
28 Complaint as though fully stated herein.

40. The foregoing acts and omissions of Defendant constitute numerous
and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
2 seq.

3 41. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227 et seq, Plaintiffs and The Class are entitled to an award of \$1,500.00
5 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(C).

7 42. Plaintiffs and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and The
12 Class members the following relief against Defendant:

13 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
14 **TCPA, 47 U.S.C. § 227 ET SEQ.**

15 43. As a result of Defendant's negligent violations of 47 U.S.C. §
16 227(b)(1), Plaintiffs seek for themselves and each Class member \$500.00 in
17 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
18 227(b)(3)(B).

19 44. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
20 such conduct in the future.

21 45. Any other relief the Court may deem just and proper.

22 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
23 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

24 46. As a result of Defendant's knowing and/or willful violations of 47
25 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member
26 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47
27 U.S.C. § 227(b)(3)(C).
28

1 47. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
2 such conduct in the future.

3 48. Any other relief the Court may deem just and proper.

4 **TRIAL BY JURY**

5 49. Pursuant to the seventh amendment to the Constitution of the United
6 States of America, Plaintiffs are entitled to, and demand, a trial by jury.
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9 Respectfully submitted this 7th day of February, 2014.
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12 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
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15 By: /s/ Todd M. Friedman
16 Todd M. Friedman
17 Law Offices of Todd M. Friedman
18 Attorney for Plaintiffs
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